IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.W.P. No. 16235 of 2006 (O&M)

DATE OF DECISION: 2.7.2007

Meenakshi Sidana

…Petitioner

Versus

State of Punjab and others

…Respondents

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Sudeep Mahajan, Advocate,
for the petitioner.

Mr. Amol Rattan Singh, Addl. AG, Punjab,
for respondent Nos. 1 to 3.

Mr. Ashwani Kumar Chopra, Senior Advocate, with
Mr. N.D. Kalra, Advocate,
for respondent No. 4.

JUDGMENT

M.M. KUMAR, J.

The petitioner has approached this Court by filing the instant petition under Article 226 of the Constitution with a prayer for quashing order dated 13.4.2006 (P-20), passed by the District Education Officer refusing to grant approval to her appointment against a grant-in-aid post of JBT (Science) teacher. A direction has also been sought to respondent Nos. 1, 2 and 3 to grant approval to the petitioner and allow her to continue as JBT (Science) teacher. A further direction has been sought for releasing her full pay for the

period she has worked from the date of her joining i.e. 4.7.2002 till the date of release of her salary as per the scale admissible to the grant-in-aid JBT (Science) teacher.

This is infact second round of litigation as the petitioner-Smt. Meenakshi Sidana was respondent in C.W.P. No. 13979 of 2002, wherein the advertisement, selection process and appointment of the petitioner on the post of JBT Teacher was challenged. It is appropriate to mention that apart from the petitioner a number of other persons including Smt. Anita, Sarvshri Udayan Dweser, Jatinder Pal Singh, dalvinder Singh and Rajiv Jindal etc. were also selected and appointed, who have filed C.W.P. Nos. 15599, 2344 and 9791 of 2006, seeking similar relief. That writ petition was dismissed on 16.2.2004 (P-13) by a Division Bench of this Court. Even the Special Leave Petition against the order dated 16.2.2004 (P-13), passed by the Division Bench stand dismissed by Hon'ble the Supreme Court on 28.11.2005 (P-18). The order of the Division Bench challenging the selection and appointment of the petitioner, who was respondent No. 4 in C.W.P. No. 13979 of 2002 deserves to be extracted *in extenso* and the same reads as under:-

> " Several pleas have been raised by the Petitioner in this writ petition. It has been first contended that the Petitioner, who was a post graduate, was more meritorious than respondent No. 4, who was a mere graduate. We find absolutely no merit in this plea as the Petitioner was a graduate and post graduate in Commerce, whereas respondent No. 4 was a Science

Teacher having qualifications of B.Sc. and B.Ed. and as such there could be no comparison between the two. It has also been contended with some vehemence that respondent No. 4 was closely related to Shri Desh Bandhu Bhalla, a member of the Selection Committee and the selection was vitiated on account of bias as well. We find from the record that the relationship inter se respondent No. 4 and Shri Desh Bandhu Bhalla has been admitted, but it has been stated in the written statements filed by both respondent No. 3 and respondent No. 4 that he had disassociated himself at the time when the Petitioner's case had come up for consideration. Moreover, we find that Besh Bandhu Bhalla aforesaid has not even been impleaded as a party to the writ petition and for this reason as well, no argument can be raised by the Petitioner on this score. The Petitioner has also contended that as per the document, Annexure P-21 dated 27.12.2002, it was clear that the Director, Education Department had not granted approval for the selection. We find that this document had come into being during the pendency of the writ petition and makes interesting reading. We reproduce the contents thereof herein:-

> "The appointments which have been made by violating the Government Instructions/Rules, those may not be given any approval, if approval

has already been given, then the same be cancelled/rejected."

We observe the language to be somewhat extra-ordinary which does support the plea of the school-Management that there was something untoward in the stand taken by the official respondents. In paragraph 2 of the reply filed by Shri Krishan Chander Kapoor, District Education Officer it finds mention that approval for the selection had been refused because of irregularities in the conduct of the interview, but no details of the irregularities have been spelt out. We accordingly find no merit in the writ petition.

Dismissed."

Facts are not in dispute. At the instance of Doaba Arya Senior Secondary School, Nawanshahr-respondent No. 4 (for brevity, 'the respondent School') advertisements were published in two English dailies – 'The Indian Express' and 'The Tribune' and twice in the Hindi Daily 'Punjab Kesri' on 25.5.2002 and 27.5.2002 (P-1, P-2, P-3 & P-4 respectively) inviting applications for six vacant JBT/ETT posts. The petitioner being eligible and qualified with B.Sc. (Non-Medical) and B.Ed. degree, applied for the post. An application to this effect was sent on 31.5.2002. She received a call letter dated 20.6.2002 (P-5) for her interview on 27.6.2002. It is pertinent to mention that the respondent School also invited District Education Officer, Nawanshahr, in the meeting of the Managing Committee, which was proposed to be held on 28.6.2002 with the object of

confirming proceedings of the Selection Committee (P-6). The Selection Sub-Committee comprising of five members, constituted in accordance with Rule 7(1) of the Punjab Privately-Managed Recognised Schools Employees (Security of Service) Rules, 1981 (for brevity, 'the 1981 Rules') interviewed the petitioner on 27.6.2002. Against all the posts of JBT, 37 candidates had applied and 28 candidates appeared before the Selection Sub-Committee for interview which continued for two days on 27.6.2002 and 28.6.2002. The Selection Sub-Committee recommended the name of the petitioner for the post of JBT (Science). The recommendation of the Selection Sub-Committee were later on confirmed by the Managing Committee of the respondent School in its meeting held on 28.6.2002 (P-7). Accordingly, the selection and appointment of the JBT teachers including that of the petitioner attained finality and the petitioner was issued an appointment letter on 29.6.2002 (P-8). According to the terms and conditions of the appointment letter she was appointed against an advertised post of JBT (Science) and her service conditions were to be governed by the 1981 Rules. She was to be paid salary in accordance with the pay scale of the Government teachers, subject to the grant of approval of her appointment by the D.P.I. (S). The petitioner was asked to execute an agreement with the school authorities that she was not to claim a higher claim except the one admissible to JBT teachers merely on the ground that she possessed higher qualifications. She duly executed the agreement and affidavit and then joined her duty (P-9). She continued to work with sincerity.

The case of the petitioner for the purposes of grant of approval and releasing 95% of grant-in-aid against the post held by her was sent to the District Education Officer in 2002 itself but was kept pending. It has been alleged that at the instance of respondent No. 5 approval was not granted as respondent No. 5 was interested in appointment of two unsuccessful candidates, namely, Smt. Jeevan Lata and Smt. Rajnish Kumari, who had sought appointment to the post of JBT teacher in the respondent School. Smt. Jeevan Lata is the wife of respondent No. 5, who has been working as Superintendent in the office of the District Education Officer, Nawanshahr. He was also interested in the appointment of Smt. Rajnish Kumari, who is the wife of a close friend of respondent No. 5. It is alleged that at their instance C.W.P. No. 13979 of 2002 was filed by one Sangha Gurbaksh Kaur challenging the entire selection process made on 28.6.2002 by the respondent School for the posts of JBT/ETT teachers in which the petitioner along with others was selected. A letter dated 27.12.2002 (P-12), which was purported to be written by the Director, Education Department (S) to the District Education Officer, was heavily relied upon wherein it was stated that those appointments, which have been made in violation of Government rules/instructions, were not to be approved and if already approved, the same were to be cancelled. The aforementioned letter has been adversely commented upon by the Division Bench in its order dated 16.2.2004 (P-13), passed in C.W.P. No. 13979 of 2002, which was dismissed. In other words, the selection of the petitioner and other selected candidates was upheld and there was no impediment for

granting approval to the case of the petitioner and other selected candidates for the purposes of grant-in-aid to the extent of 95%.

After dismissal of C.W.P. No. 13979 of 2002 and Special Leave Petition, the petitioner made numerous representations for grant of approval as her appointment was upheld. On account of deliberate delay having been caused, the respondent School addressed a letter to the petitioner on 2.1.2004 (P-15) stating that in the absence of approval having been granted by the department, the Managing Committee was in no way liable to pay salary to the petitioner according to Government scale as applicable to the aided post.

The District Education Officer-respondent No. 3 eventually vide order dated 13.4.2006, declined to grant approval to the appointment of the petitioner as JBT teacher for the purposes of releasing 95% grant-in-aid against the aided post (P-20). Respondent No. 3 in his order dated 13.4.2006 (P-20) has put forward numerous pleas to decline approval to the case of the petitioner. After recording that the appointment to an aided post for the purposes of granting 95% grant-in-aid has to be examined under the 1981 Rules, it has been stated that the advertisements (Annexures P-1 to P-4) were not in accordance with Rule 7(1) of the 1981 Rules and it violated the instructions dated 20.12.1995 (R-1) and 15.10.1997 (R-2). It has also been pointed out that the advertisement was required to be detailed one and should have been in two parts. In the first part it should have been mentioned that the candidates having JBT/ETT or equivalent qualifications were to be considered for appointment. If such candidates were not to be available then in second part it was required to be stated that then Graduate/Post Graduate with B.Ed. were to be

considered for the post and they were to be given JBT pay scale. The advertisement did not answer the aforementioned description and, therefore, it violated the tenor of Rule 7(1) of the 1981 Rules and the instructions dated 20.12.1995 and 15.10.1997 (R-1 & R-2). The order further discloses that the respondent School through its Managing Committee had committed gross irregularities in the selection process to various appointments made against the above said advertisements and, therefore, the appointments were not to be approved. However, nothing has been substantiated as to what irregularities or illegalities have been committed in the selection process. Then a reference has been made to a letter dated 17.1.2003, which is alleged to have pointed out the details of irregularities. The factum of filing C.W.P. No. 13979 of 2002 and its dismissal on 16.2.2004 by a Division Bench of this Court has been admitted and even the dismissal of Special Leave Petition by Hon'ble the Supreme Court has not been disputed. However, it has been stated that no relief was granted to the petitioner in those proceedings or anyone of the respondents and, therefore, the petitioner was not entitled to approval of her appointment for the purposes of grant-in-aid.

In the written statement filed on behalf of respondent Nos. 1 to 3, the stand which has already been noticed in the preceding paras has been repeated. The instructions dated 20.12.1995 (R-1) and 15.10.1997 (R-2) and a copy of the letter dated 17.1.2003 (R-5) have been placed on record. It is pertinent to mention that the letter dated 17.1.2003 (R-5) is similar in its contents, which was subject

matter of adverse comments in the order of the Division Bench, dated 16.2.2004, passed in C.W.P. No. 13979 of 2002 (P-13).

Mr. Sudeep Mahajan, learned counsel for the petitioner has vehemently argued that once the selection and appointment of the petitioner has been upheld by this Court and all the pleas which have been taken by respondent Nos. 1 to 3 in their effort to support Sangha Gurbax Kaur (petitioner in C.W.P. No. 13979 of 2002) then no room is left for them to refuse approval to the case of the petitioner for the purposes of releasing grant-in-aid to the extent of 95%. Learned counsel has maintained that even the Special Leave Petition against the Division Bench judgment of this Court, dated 16.2.2004 (P-13), was dismissed by Hon'ble the Supreme Court on 28.11.2005 (P-18). He has further submitted that even in the order dated 13.4.2006, passed by the District Education Officer-respondent No. 3, no substantial ground for refusal to accord approval is forthcoming and all the grounds are absolutely vague. Learned counsel has submitted that had there been any irregularity and illegality that could have been brought before this Court when the matter was pending in C.W.P. No. 13979 of 2002. In respect of letter dated 17.1.2003 (R-5), learned counsel has submitted that such a letter would not survive for consideration because had there been any such letter in existence then it would have been brought on record during course of proceedings in this Court or before Hon'ble the Supreme Court. Learned counsel has pointed out that the tenor of this letter is more like the letter dated 27.12.2002, which was annexed as Annexure P-21 in the earlier

petition and has been severally condemned by the Division Bench upholding the directions.

Mr. Amol Rattan Singh, learned State counsel has vehemently argued that there is patent violation of Rule 7(1) of the 1981 Rules read with the instructions dated 20.12.1995 and 15.10.1997 (R-1 & R-2). According to the learned counsel, the aforementioned instructions categorically required the Managing Committee of the respondent School to advertise the post/vacancy of JBT teachers by splitting the advertisement in two parts. In the Ist part the candidates who have the qualification of JBT/ETT or equivalent were required to be considered and in the IInd part only in case where the JBT/ETT pass candidates were not available then appointments were required to be made from amongst those who had the qualification of Post Graduation along with B.Ed. It has been highlighted that the instructions further made it clear that merely because the candidates with Graduation or Post Graduation qualifications along with B.Ed. were to be appointed would not be sufficient for them to claim higher pay scale of B.Ed. teachers. Disputing the claim made by the petitioner that the advertisement did not suffer from any irregularity, learned State counsel has pointed out that the advertisement has merely mentioned that experienced teachers against six vacant JBT/ETT aided posts were required preferably one M.A. English, one M.Sc. Chemistry, one M.Sc. Biology, one M.Com, one M.Sc. Maths and one M.A. Economics. Learned State counsel has maintained that the advertisement does not answer the requirements of instructions dated 20.12.1995 and

15.10.1997 (R-1 and R-2). However, the learned State counsel has not been able to say anything with regard to the Division Bench judgment of this Court wherein the selection and appointment of the petitioner on the post of JBT/ETT teacher was un-successfully challenged and even the Special Leave Petition against the judgment of the Division Bench was dismissed by Hon'ble the Supreme Court.

After hearing learned counsel for the parties and perusing the lengthy pleadings, we are of the considered view that this petition deserves to succeed. Firstly, the issue of selection and appointment of the petitioner cannot be reopened once a Division Bench of this Court in C.W.P. No. 13979 of 2002, vide order dated 16.2.2004 (P-13) has upheld the same. Even the Special Leave Petition against the aforementioned order has been dismissed on 28.11.2005 (P-18). It is worthwhile to point out that the Division Bench had noticed a letter dated 27.12.2002 issued by the Director, Education Department, showing that the approval to the selection of the petitioner was not granted. The Division Bench had found that the document came into existence during the pendency of the writ petition and the language was somewhat extra ordinary. The Division Bench leaned to support the plea of the School Management that there was something untoward to the stand taken by the official respondents. It was further noticed from para 2 of the reply filed by the then District Education Officer (Shri Krishan Chander Kapoor) that approval to the selection of the petitioner had been refused because of irregularities in the conduct of interviews without furnishing any details of those irregularities. Once the matter has

been dealt with by this Court to such an extent, it does not lie in the mouth of respondent Nos. 1 to 3 to decline approval to the case of the petitioner.

We are further of the view that there is no violation of Rule 7(1) of the 1981 Rules, which reads as under:-

> "7. Appointing authority and method of appointment.-
>
> (1) All appointments to the aided posts shall be made by the managing committee in the following manner:-
>
> (i) Appointing authority shall advertise in both English and vernacular daily newspapers in the State, vacancy or vacancies to be filled in by giving full particulars thereof including the requisite qualifications, number of vacancies to be filled in and the last date by which the applications may be submitted;
>
> (ii) the recommendations for appointment of the candidates shall be made by a sub-committee consisting of five members of the managing committee.
>
> (2) The members of the sub-committee shall be appointed by the managing committee."

A perusal of the Rule 7(1) of the 1981 Rules shows that the Managing Committee, who is the appointing authority is to advertise an aided post in daily newspapers both in English and Vernacular in the State by giving full particulars including the

requisite qualifications, number of vacancies to be filled and the last date by which the applications were to be submitted. It is further required by the aforementioned Rule that recommendation for appointment of the candidate is to be made by a Sub-committee consisting of five members of the Managing Committee, which is to be appointed by the Managing Committee. A close scrutiny of the facts of the present case shows that the advertisement had been issued both in the English dailies – 'The Indian Express' and 'The Tribune' as well as in the Hindi daily – 'Punjab Kesri' on 25.5.2002 and 27.5.2002. Thereafter the interviews were conducted by a Sub-committee of five members of the Managing Committee, who were appointed by the Managing Committee. It may be true that there is variation in the advertisement in so far as it is not in two parts as per the instructions dated 20.12.1995 and 15.10.1997 (R-1 & R-2). But then the variation in the advertisement was earlier subject matter of dispute in C.W.P. No. 13979 of 2002. That decision has already attained finality and cannot be reopened. Even otherwise we find that this variation in the advertisement is not of such a magnitude that it would warrant the view that the whole selection process has been vitiated. Therefore, the order dated 13.4.2006 (P-20) is liable to be set aside and directions are deserve to be issued to the respondents.

For the reasons aforementioned this petition succeeds. The order dated 13.4.2006 (P-20) is hereby quashed. A direction is issued to respondent Nos. 2 and 3 to accord approval to the appointment of the petitioner for the purposes of 95% grant-in-aid and also to release the grant-in-aid to the respondent School within a

period of two months from the date of receipt of copy of this order. We also issue direction to the respondent School that on receipt of grant-in-aid from respondent Nos. 1 to 3 it shall be released to the petitioner whole salary from the date she has joined till date by settling the accounts as some salary during the pendency of the petition without any delay and even otherwise has been paid to the petitioner. The petitioner shall also be entitled to her costs, which we determine at Rs. 10,000/-. The costs shall also be paid within a period of two months.

The writ petition stands disposed of in the above terms.

(M.M. KUMAR)
JUDGE

(RAJESH BINDAL)
JUDGE

2.7.2007
Pkapoor

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